HAZIMAH MUDA & ANOR *a*

v.

AB RAHIM AB RAHMAN & ANOR

HIGH COURT MALAYA, KOTA BHARU *b*
MUHAMMAD KAMIL AWANG J
[CIVIL APPEAL NO: 12-19-2000]
29 NOVEMBER 2000

CIVIL LAW ACT: *Damages - Damages for bereavement - Deceased with two spouses - Whether statutory sum to be divided equally - Civil Law Act 1956, s. 7(3B)(a)* *c*

The appellants were the two wives of the deceased. They claimed under s. 7(3B)(a) of the Civil Law Act 1956 ('CLA') for damages for bereavement of RM10,000 each. The sessions judge had ruled that the said sum should be divided equally between them, *ie*, each person to receive RM5,000. The appellants appealed against the ruling and submitted that the law had recognised them as legitimate wives. As such, there were two institutions of marriage and they were entitled to the statutory sum of RM10,000 each. *d*

Held: *e*

[1] Under s. 7(3B)(a) CLA, the word "spouse" is in the singular and it is not defined. The word "spouse" does not mean "spouses". If the Act had intended that if the deceased had more than one spouse and that the statutory sum was for each spouse, it would have provided so. *f*

[2] Legislature has given a statutory limit of RM10,000 for the spouse, without taking into consideration personal or customary law which allowed a plurality of spouses. It must be remembered that this was civil law and no personal law was admitted. *g*

[3] It is clear that Parliament had focused on the civil law aspect of marriage. Section 7(3B)(a) of the Act had provided for damages for bereavement for the spouse and if there is more than one spouse recognised by personal or customary law, it is to be shared equally.

[Appeal dismissed.] *h*

Case(s) referred to:
Chan Chin Ming & Anor v. Lim Yok Eng [1994] 3 CLJ 687 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 7(3A), (B)(a) *i*

Other source(s) referred to:
Concise Oxford Dictionary, 9th edn

For the appellants/plaintiffs - Indran Rajalingam (Ramachandran with him); M/s Sandu & Co
For the respondents/defendants - R Ganavathy Naidu; M/s G Naidu & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Muhammad Kamil Awang J:

The deceased person died in a road accident, and surviving him were his two wives and children. The wives had jointly claimed under s. 7 of the Civil Law Act 1956, for damages for bereavement of RM10,000 each.

The learned Sessions Court Judge awarded damages for bereavement under s. 7(3B)(a) of the Act RM10,000 and ruled that it should be divided equally between the two spouses, *ie*, each received RM5,000. The appellants appealed against the ruling.

Learned counsel for the appellants submitted that s. 7(3B)(a) of the Act should be given a literal interpretation. The law recognised the two wives as legitimate, and as such there were two institutions of marriage. Therefore, each spouse was entitled to damages for bereavement of RM10,000. Each of the spouses might have brought separate actions within the time limit, and she was entitled to RM10,000.

Learned counsel for the respondents disagreed and submitted that prior to the amendment to s. 7 of the Act in October 1984, damages for loss of life were shared between the spouse and other beneficiaries. In support of his argument, he cited the case of *Chan Chin Ming & Anor v. Lim Yok Eng* [1994] 3 CLJ 687, where Peh SCJ states at p. 696:

> There is one important principle of statutory interpretation which had been applied repeatedly over the years. It is this, that it is in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness. I find such clearness missing. To give an example, Britain's Courts of Judicature Act, 1873 provided that an injunction might be granted in all cases in which the Court considered it "just and convenient", it was held by the House of Lords in *Beswick v. Beswick* [1968] AC 58 to the effect that such general words would still mean that such injunction might be granted only in the usual infringement of recognized legal or equitable right. In other words, it is a fairly strong presumption against alteration in the law except with such irresistible clearness expressed.

The 1984 amendment introduced a new head of damages, *ie*, damages for bereavement, and on the same token it should be shared equally among the spouses if more than one. Moreover only one suit in respect of one subject-matter was maintainable.

Subsections (3A) and (3B) to s. 7 of the Civil Law Act 1956 state:

> (3A) An action under this section may consist of or include a claim for damages for bereavement and, subject to subsection (3D), the sum to be awarded as damages under this subsection shall be ten thousand ringgit.
>
> (3B) A claim for damages for bereavement shall only be for the benefit –
>
> (a) of the spouse of the person deceased; and
>
> (b) where the person deceased was a minor and never married, of his parents.

There are two categories of persons who are entitled to claim for damages for bereavement; (a) the spouse and (b) the parents of the deceased. In the case of (b), sub-s. (3C) qualifies it:

> (3C) Where there is a claim for damages under paragraph (b) of subsection (3B) for the benefit of the parents of the person deceased, the sum awarded shall be divided equally between them subject to any deduction likely to be made in respect of all costs and expenses including costs not recovered from the defendant.

In subsection of (3B)(a) the word "spouse" is in the singular, and it is not defined. The word must mean the spouse. By no stretch imagination that the word 'spouse' means 'spouses'. Learned counsel for the appellant suggested that if the person deceased has more than one spouse, the statutory sum RM10,000 is for each spouse, I do not think it is correct if the Act intends that then it would have said so. It seems that the RM10,000 is given to the spouse, and if in a case where a man has more than one spouse under his personal or customary law, then it may be shared by the spouses. Legislature in its wisdom seems to have given a statutory limit of RM10,000 to be given to the spouse, without taking into consideration the personal or customary law which allows a plurality of spouses to its adherents. It should be remembered that this is a civil law and admits no personal law. I do not think that it is correct to say that s. 7(3B)(a) is applicable to personal law, for example, the Muslim law which recognises up to four legitimate spouses that a man may have at any one time and under sub-s. 7(3B)(a) each spouse should get RM10,000. It seems to me that it is purely an administrative arrangement or devise that an equitable sharing of the RM10,000 between the spouses is called for. This is not prohibited by the Act.

According to the *Concise Oxford Dictionary*, 9th edn, – the word 'bereave' means deprive of a relation, friend. Thus, if more than one spouse, damages for bereavement may be shared between the spouses, equally or otherwise, depending on the circumstances of the case. Subsection 7(3B) talks of damages for bereavement of a person who has lost a relation. In my view, it is clear that Parliament when creating a new head of damages for bereavement, it focused on the civil law aspect of marriage, *ie*, s. (3B)(a) provides for damages for bereavement to the spouse. The intention seems to be that the RM10,000 is damages for bereavement for the spouse, and if there are more than one spouse recognised by the personal or the customary law, it should be shared equitably.

In the circumstances, I would dismiss the appeal. No order as to costs.